

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

**Georgian Gardens Operations Management, LLC
d/b/a Georgian Gardens Center for Rehab and
Healthcare**

Employer

and

Case 14-RC-224717

**SEIU Healthcare MO and KS, a Division of SEIU
Healthcare Illinois/Indiana**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, which represents an existing unit of the Employer's service employees,¹ filed a petition to include licensed practical nurses (LPNs) in that unit by a self-determination election, commonly called an *Armour-Globe*² election. The Employer operates a residential care facility. The Employer maintains that the unit sought by Petitioner is not appropriate because the LPNs are statutory supervisors.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As described below, based on the record and relevant Board cases, I find that the Employer has failed to meet its burden to demonstrate that the LPNs are supervisors within the meaning of Section 2(11) of the Act. Therefore, I find that the petitioned-for unit is appropriate for collective bargaining and I shall direct an election among the unit employees, as set forth below.

FACTS

A. The Employer's Operations

The Employer operates a skilled nursing facility with 54 residents in two wings. The Employer's Administrator is responsible for overseeing its entire operation. The Employer's staff consists of 85 employees in 11 different departments. The Nursing Department is led by the Director of Nursing (DON). The Employer has plans to hire an Assistant Director of Nursing (Assistant DON) although that position is currently vacant. There are 11 nurses in the Nursing

¹ The existing bargaining unit is described in the relevant collective-bargaining agreement as: "all service employees by the Home at this Potosi, Missouri Nursing Home, as certified by the NLRB in case 14-RC-10219, excluding office clerical and professional employees, registered nurses, licensed practical nurses, maintenance employees, and supervisors as defined in the Act." At hearing, the unit was described as including CNAs, CMTs, dietary, housekeeping, and laundry employees.

² See *Armour & Co.*, 40 NLRB 1333 (1992); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

Department – four are Registered Nurses (RNs) and seven are LPNs. These nurses all have the title “charge nurse.” The Employer is required by the state of Missouri to have an RN present for at least eight hours each day. Therefore, the Employer has one RN and one LPN work the day shift, normally from 7:00 a.m. to 7:00 p.m., and has one LPN work the night shift from 7:00 p.m. to 7:00 a.m. The LPN rate of pay is \$19 per hour. The Employer also employs approximately 50-60 certified nurses’ aides (CNAs), and 10 certified medical techs (CMTs) in the Nursing Department. The day shift normally has five to seven CNAs and two CMTs. The night shift generally has five CNAs and one CMT. CMTs and CNAs are paid around \$8-\$9 per hour. The Employer’s other departments include dietary, housekeeping, and laundry.

B. The LPNs’ Duties and Responsibilities

Generally, LPNs are responsible for direct care of residents including assessing, charting and commenting on conditions or concerns and to verify that CNAs are performing their job duties. According to the Charge Nurse (LPN) job description, LPNs are responsible for, in relevant part, “providing care directly to the residents and/or overseeing the care by a Certified Nursing Assistant...” The job description further states, under “Supervisory Requirements,” that LPNs “[o]versee the activities of non-licensed nursing employees under the direction of the Director of Nursing and/or Assistant Director of Nursing” and “[carry] out supervisory responsibilities, including, but not limited to, interviewing and training employees; planning, assigning, and directing work; rewarding employees; and addressing complaints and resolving problems; may provide recommendations of particular weight in hiring, appraising performances, discipline and termination decisions.” The record evidence shows that LPNs do not interview or train CNAs and CMTs.

LPNs report to the head of Nursing, the DON. On weekends when Department Managers are not working, employees from different departments, including the Nursing Department, report to the Charge Nurse, who is usually an LPN. The record is not clear regarding the nature of the reporting done by employees in other departments. LPNs sign for deliveries of various supplies such as medication, beds, oxygen, and medical supplies. If an LPN is unavailable to sign for supplies, another employee, such as a CNA, will sign for the items.

As part of their duties, the LPN on duty will sign the CNA Rounds Checklist when presented with it by a CNA. CNAs do not present the Rounds Checklist to the LPN before and after every shift. On the occasions when the checklist is presented, the LPN signs it, but does not independently confirm that the tasks on the checklist have been completed. Instead, the outgoing and incoming CNAs do rounds together to ensure all checklist items have been performed and both CNAs sign off on the Rounds Checklist. If the Rounds Checklist is not turned in or the items on the checklist were not actually completed, the record indicates that the LPN is not asked about it. Additionally, the LPN is not disciplined if the Rounds Checklist is not turned in or if the listed tasks were not completed by the CNAs.

Recently, the Employer altered the way it makes its monthly schedules and daily work assignments. Prior to June 2018, a CNA made the CNA schedules and a CMT made the CMT schedules. The DON made the LPN schedule each month. Beginning around June 2018, the Administrator asked a particular LPN to assist in making the monthly work schedule for LPNs,

CNAs and CMTs. (This LPN has no special title. However, for clarity, I will hereafter refer to this LPN as the Scheduling LPN). The Administrator and the Scheduling LPN work on the monthly schedules together. The monthly CNA schedule is done by rotation. The monthly CMT schedule used to be done by rotation but staff availability has hampered the Employer's ability to continue this rotation. Although there is no LPN rotation, the LPNs do get every other weekend off. The extent to which the Scheduling LPN has discretion over the monthly schedule is unclear in the record. However, employees turn in their vacation and scheduling requests to the Administrator and do not communicate with the Scheduling LPN regarding the schedule. No other LPNs are involved in scheduling employees.

In addition, around the same time in June 2018, the Scheduling LPN took over the daily scheduling of CNA work assignments from the CNA shop steward, who previously assigned daily tasks. Each day, the Scheduling LPN fills in the wing/work assignment for the CNAs on a Staffing Sheet. The Staffing Sheet also indicates who is assigned as the CMT, who is assigned as Restorative, who is responsible for passing out ice, and who is responsible for the hydration cart. The Staffing Sheet also has spaces for who is to take first lunch and who is to take second lunch, although these spaces were not filled out one of the Staffing Sheets in the record. Of the four Staffing Sheets entered into the record, many of the employee names repeat in the same wing if they are scheduled on consecutive days.³ The record does not establish what factors the Scheduling LPN considers when filling out the Staffing Sheet and there is no record evidence that other LPNs create Staffing Sheets of their own. Moreover, the only change an LPN makes to the Staffing Sheet is to cross employees off when someone calls off work. Any other changes must go through the DON.

If an employee is not in the Employer's time keeping system or forgets to clock in or out, the employee fills out a Time Correction Sheet which is signed by an LPN on the "supervisor" line. The Administrator or DON confirms that the employee is on the schedule for that day, signs the Time Correction Sheet, and turns it in to the Bookkeeper. If the LPN does not fill out a Time Correction Sheet, the LPN will be reminded to fill it out and will not be disciplined.

When any employee is absent or is late clocking in from lunch, the LPN fills out an Absence Report noting the employee's name and the reason for the absence. The LPN signs on the "supervisor" line of the form. Once the Absence Report is filled out and signed, the LPN gives it to the DON and the Administrator. The Administrator tracks employee absences and gives employee warnings. Once an employee has three warnings, the employee is terminated by the Administrator.

If a CNA fails to complete a task during a shift, the LPN may elect to draft the fact section of a disciplinary form, known as a Performance Improvement Agreement. The ADON, DON, department managers, and the Administrator also fill out these forms. The record evidence shows that the LPN fills out a description of the incident, but there is no evidence that

³ The Employer entered five Staffing Sheets into the record, but it appears that pp. 2-3 are different versions of the Staffing Sheet for the same day, July 16, 2018.

the LPN fills out the level of discipline issued,⁴ nor is the LPN involved further in the disciplinary action. The Administrator testified that employee files are locked in the human resources office, but that LPNs have access to the disciplinary documents during the course of filling out the form. An LPN testified that the LPN has never checked an employee's disciplinary history and has never been told that the LPNs could do so before filling out the form. Nonetheless, after the LPN fills out the fact section, the form is turned in to the DON and the Administrator, who may then discuss the incident with the employee and/or the Petitioner's shop steward. Based on these conversations, and occasional conversations with the Employer's human resources department, the Administrator determines the level of discipline to impose on the employee, if any, and holds a meeting with the affected employee, the DON, human resources representative, and/or shop steward. Performance Improvement Agreements filled out by LPNs do not always lead to discipline and the LPN is not present when the employee receives any discipline or other corrective action. Regarding the suspension of employees, the LPN must get approval from the Administrator or DON before sending an employee home. There is no evidence that LPNs are involved in decisions to discharge employees.

The record is unclear regarding the proper procedure to call in an employee if the Employer is short staffed. The Administrator testified that the LPNs make the decision and determination of who to call. An LPN and an employee shop steward testified that the LPN notifies the shop steward of the staffing shortage and the shop steward is responsible for calling employees to request that they report to work. The record is silent regarding how or when an LPN would determine there was a staffing shortage. Regardless, when an LPN does need an employee to come into work, the LPN can only request the employee to come to work. LPNs do not have the authority to require that an employee report to work if the Employer is short staffed. An LPN testified that the only time the LPN called a CNA in for a shift, the LPN went down the list alphabetically and was unable to get a volunteer. If an employee agrees to come to work when the Employer is short staffed, the employee may be offered crisis pay - \$50 if the employee works 4-7 hours and \$100 if the employee works 8-12 hours. An LPN signs an Employee Crisis Pay form for the employee to receive the additional compensation. On June 1, 2018, the Employer posted a notice notifying employees that crisis pay must be approved by the Administrator. The Administrator testified she implemented a new rule that only employees who have not called in for the previous 30 days and have good attendance are eligible for crisis pay because crisis pay used to be given out regularly to employees with poor attendance.

The Employer has monthly staff meetings which conclude with a meeting between the Administrator, the DON, and the Charge Nurses. According to the Administrator, they discuss personnel issues, charting, documentation, tasks the Charge Nurses are not doing correctly, and their supervision of the CNAs and CMTs. Around 1-1½ weeks before the hearing, the Employer held a meeting with the Charge Nurses wherein they discussed the appropriate times to call the Administrator and the DON such as patient emergencies and emergency employee issues.

⁴ Although the Employer provided one recent Performance Improvement Agreement with the level of discipline filled out, the Record contains no direct testimony regarding who filled this section of the form out.

BURDEN OF PROOF

The burden to prove supervisory authority is on the party asserting it and must be established by a preponderance of the evidence. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 694 (2006). Lack of evidence is construed against the party asserting supervisory status. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003); *Michigan Masonic Home*, 332 NLRB 1409, 1409 (2000). "[W]henver the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements, without detailed, specific evidence of independent judgment, are insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

ANALYSIS

The traditional test for determining supervisory status is: (1) whether the individual has the authority to engage in or effectively recommend any one of the 12 indicia listed in Section 2(11) of the Act; (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the individual holds the authority in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994). In regard to the first prong of the test, secondary indicia may also be used to augment supervisory status, however, "secondary indicia should not be considered in the absence of at least one characteristic of supervisory status enumerated in Section 2(11)." *Pacific Beach Corp.*, 344 NLRB 1160, 1161 (2005). As to the second prong of the test, the Board examines whether the indicative authority, exercised on behalf of management, requires independent judgment and is not routine in nature. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001).

A. Responsible Direction

At the outset, I note that in determining supervisory status, the Board is not guided by an individual's job title, but by actual duties performed. *Coral Harbor Rehabilitation & Nursing Center*, 366 NLRB No. 75, slip op. at 17 (May 2, 2018). It is well settled that an employee "cannot be transformed into a supervisor by the vesting of a title and the theoretical power to perform one or more of the numerated functions in Section 2(11) of the Act. *Lakeview Health Center*, 308 NLRB 75, 78 (1992). In short, supervisory status cannot be established merely by "paper" authority. *Coral Harbor*, 366 NLRB at slip op at 17. For these reasons, I do not rely on the LPN Job Description or the forms LPNs signed on the "supervisor" line.

The Employer's contention that the LPN signatures on Rounds Checklists and Time Correction Sheets constitute evidence of supervisory authority is misplaced. In order for an individual to "responsibly direct," he or she must be held accountable for an underling's failure to complete a task. *Oakwood Healthcare Center*, 348 NLRB at 691-92. In the instant case, the evidence demonstrates that LPNs are not held accountable for deficiencies in the Rounds Checklists or for inaccuracies on the Time Correction Sheets. Indeed, the LPN is not held accountable if the Rounds Checklist is turned in at all. Moreover, the record shows that the

LPNs are not responsible for independently verifying that the Rounds Checklists are completed. Rather, the incoming and outgoing CNAs collaborate to complete that task and the LPN's signature is a mere clerical task that, without more, is insufficient to establish that the LPNs responsibly direct employees within the meaning of Section 2(11).

B. Assignment of Work

The Employer relies on the Scheduling LPN's creation of monthly employee schedules as conferring supervisory status on LPNs. The Board has held that merely writing a schedule for unit employees is insufficient to establish that an individual is a supervisor within Section 2(11). For instance, in *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991), the Board found that an individual who wrote schedules was not a supervisor where there was no evidence that the employee "independently resolve[d] questions regarding the scheduling of employees."

Here, there is similarly no evidence that the Scheduling LPN creates the monthly schedule independently. Indeed, the record evidence is the opposite; the Administrator and the Scheduling LPN work collectively to create the monthly schedule. Moreover, even assuming the lion's share of schedule creation fell to the Scheduling LPN and not the Administrator, the Employer has not established that the Scheduling LPN exercised the type of judgment required to cloak the individual with supervisory authority. The CNA schedule is rotational and requires only adherences to that rotation. While the record reflects that CMT schedules are not rotational, this is due to a lack of staffing, and the record evidence regarding the current practice is too vague to establish supervisory authority. For the same reason, the Employer has not met its burden of establishing that creation of the LPN schedule requires "independent resolution of scheduling issues" as contemplated by the Board in *Sears, Roebuck & Co.*⁵

The Scheduling LPN's role in filling out the Staffing Sheets does not demonstrate supervisory status. The Board's decisions in *Oakwood Healthcare, Inc.* and *Golden Crest Healthcare Center* provide the framework for determining whether the Scheduling LPN assigns work using the requisite degree of independent judgment. In *Oakwood Healthcare, Inc.*, the Board explained that assignment means designating an employee to a place (such as location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties as opposed to discrete tasks. *Oakwood Healthcare, Inc.*, 348 NLRB at 689. The authority to make an assignment, by itself, does not confer supervisory status – the putative supervisor must also use independent judgment when making such assignments. *Id.* at 692-93. This means that the individual must exercise authority that is free from the control of others, and make a judgment that requires forming an opinion or evaluation by discerning and comparing data. *Id.* Additionally, the judgment must "rise above the merely routine or clerical" for it to be truly supervisory, even if it is made free of control of others and involves forming an opinion by discerning and comparing data. *Id.*

⁵ Even assuming the record supported a conclusion that the LPN who assists in creation of employee schedules is a supervisor within the meaning of Section 2(11), the record is clear that only one LPN performs this function. Thus, the petitioned-for unit remains appropriate even assuming the Scheduling LPN is a supervisor.

The record testimony is that the Scheduling LPN assigns daily job duties and lunch breaks to employees. There is no evidence that other LPNs fill out Staffing Sheets. Importantly, the record is devoid of evidence regarding what factors, if any, the Scheduling LPN uses before filling out the Staffing Sheet. The Scheduling LPN did not testify. LPNs may change an employee's job assignment if an employee fails to report for a shift. An LPN would exercise independent judgment when making assignments based on an "analysis of an available nurse's skill set and level of proficiency at performing certain tasks, and her application of that analysis in matching that nurse to the condition and needs of a particular patient." *Id.* at 695. No such evidence was presented. Relying on the evidence presented, these assignments are routine in nature and do not require the use independent judgments regarding the assignments or employee skills before making such assignments. *Pacific Coast M.S. Industries*, 355 NLRB 1422, 1424 (2010). Moreover, conclusory evidence without support of specific record examples of the use of independent judgment is insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Even if the evidence clearly established that the LPNs assigned breaks and lunch periods (and the record does not clearly establish this), such assignments are routine and do not require the use of independent judgment and, therefore, are insufficient to constitute assignment of work. *Los Angeles Water & Power Employees' Assn.*, 340 NLRB 1232, 1234 (2003).

Finally, the Employer asserted that LPNs are involved in calling in employees when the Employer is short staffed. However, the record evidence shows that the shop steward is the person who regularly calls employees in and the record does not contain evidence which shows that LPNs utilize independent judgment in determining whether the Employer is understaffed and when to call employees in. Calling in employees or randomly seeking volunteers in order to fill shift vacancies, without the authority to compel an employee to come to work, does not confer supervisory status on the individual. *Golden Crest Healthcare Center*, 348 NLRB at 729. Absent specific evidence of the LPN's independent judgment, I do not find that the LPN's role in calling in employees confers on them supervisory authority.

C. Discipline/Suspension

The Employer asserts that the LPNs have authority to discipline because they fill out the fact section of the Performance Improvement Agreement. The Employer introduced seven Performance Improvement Agreement forms purportedly filled out by LPNs during the Administrator's tenure. The level of discipline is filled out on only one of the forms. However, the record does not contain any evidence of who filled out the level of discipline on that specific form. The remaining forms contain only a recitation of the incident which led to the writing of the Performance Improvement Agreement. The Employer appears to argue that the LPN's decision to draft the fact section of the form in itself confers supervisory authority. However, after the LPN drafts the fact section, the Administrator performs an independent investigation by interviewing the employee, speaking to the shop steward, and/or speaking to human resources, before determining the level of discipline to give to an employee. In fact, the Administrator may determine that no discipline is appropriate. The LPN is not involved in the investigation, determination, and implementation of the discipline of the employee. That the LPNs are involved in the reporting of performance issues and of the creation of the Performance

Improvement Agreement does not in and of itself confer supervisory authority. It cannot be said that the LPN recommends discipline or the severity of discipline. See *Coral Harbor*, 366 NLRB at slip op at 20.

In addition, the Employer claims that LPNs have the authority to send employees home, which appears to be an argument that LPNs have the authority to suspend employees. However, there are no examples in the record where an LPN suspended or otherwise sent an employee home without approval of the DON or the Administrator. Even if the authority did exist, it would be limited to situations involving egregious conduct, which is typically not found to constitute supervisory authority by the Board. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999).

D. Reward

The sole responsibility to reward employees identified by the Employer relates to crisis pay. The evidence, however, establishes that LPNs only sign the forms and the Administrator must approve the payment of crisis pay. Such activities cannot establish supervisory status due to the absence of evidence of independent judgment. *Shaw, Inc.*, 350 NLRB 354, 357 (2007) (no independent judgment where putative supervisor passed along every employee request for a raise regardless of whether he thought raise was warranted); *Oakwood Healthcare, Inc.*, 348 NLRB at 693 (explaining “independent judgment” requires that an individual “form an opinion or evaluation by discerning and comparing data”).

Consequently, the record evidence does not establish the ability of LPNs to reward other employees within the meaning of Section 2(11) of the Act.

E. Secondary Indicia

The Employer also asserts that the LPNs are supervisors within the meaning of Section 2(11) of the Act because they serve as the highest-ranking personnel on night shifts, and sometimes on weekends, and because they participate in monthly management meetings.

As an initial matter, the Board has consistently held secondary indicia cannot provide an independent basis for Section 2(11) status. See, e.g., *K.G. Knitting Mills*, 320 NLRB 374, 374 (1995) (reversing, where no primary indicia were present, finding of supervisory status based solely on fact individual had key to factory, opened facility in the morning, “watche[d] everything” before the manager arrived, and dealt with trucks arriving at plant); *Pacific Beach Corp.*, 344 NLRB at 1161 (noting, “secondary indicia should not be considered in the absence of at least one characteristic of supervisory status enumerated in Section 2(11)”).

Moreover, the record does not establish that any particular LPN or subset of LPNs serves as the highest-ranking employee on a regular basis. Thus, even assuming LPNs serving as the highest-ranking employees perform supervisory functions on such occasions, “[t]he exercise of some purportedly ‘supervisory authority’ in a sporadic manner does not confer true supervisory status.” *St. Francis Medical Center-West*, 323 NLRB 1046, 1048 (1997) (citing *Biewer Wisconsin Sawmill*, 312 NLRB 506 (1993)). Additionally, the Board will not find supervisory status based solely on the ratio of supervisory to non-supervisory employees. *Ken-Crest Services*,

335 NLRB 777, 779 fn. 16 (2001) (explaining, “nothing in the statutory definition of ‘supervisor’ implies that service as the highest ranking employee on site requires finding that such an employee must be a statutory supervisor”).

Likewise, the fact that an individual may attend management meetings does not independently establish supervisory authority. *Dean & Deluca New York, Inc.*, 338 NLRB at 1048.

The Employer’s assertions regarding secondary indicia consequently fail to establish supervisory status.

Here, the Employer asserts that the LPNs are supervisors within the meaning of Section 2(11) of the Act because they have the authority to assign, responsibly direct, discipline, suspend, and reward the CNAs and CMTs. The record evidence fails to support the Employer’s position.

FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time licensed practical nurses, excluding office clerical employees, professional employees, registered nurses, guards, and supervisors as defined by the Act.

Because I conclude that the unit sought by Petitioner is appropriate for collective bargaining and that a question of representation exists under Section 9(c) of the Act, I am directing an election in this matter.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by SEIU Healthcare MO and KS, A Division of SEIU Healthcare Illinois/Indiana as part of the existing unit described as:

All service employees, including CNAs, CMTs, dietary, housekeeping, and laundry employees, employed by the Employer at its Potosi, Missouri facility, EXCLUDING office clerical and professional employees, registered nurses, licensed practical nurses, maintenance employees, guards, and supervisors as defined in the Act.

A. Election Details

The election will be held on August 30, 2018 from 6:00 p.m. to 7:00 p.m. in the Sunroom at the Employer's Potosi, Missouri facility.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **August 18, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **August 24, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: August 22, 2018

/s/ Leonard J. Perez

Leonard J. Perez, Regional Director
National Labor Relations Board, Region 14
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